HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 433 of 2000
(New No. 125 of 2002)

Mam Chand s/o Sri Samay Singh
R/o Mohalla Kashpur, Roorkee,
District Haridwar ..... Applicant

Versus

1. State of U .P.
2. Judicial magistrate, Roorkee
3. Subhash Chand s/o Sri Roop Chand
R/o Dala Mazra, P.S. Gaggarhedi, District Saharanpur
At present village Sunehra Mohalla Rashipur, P.S.
Gang Nahar, District Haridwar .... Respondents

Dated: 14.11.2006

Hon'ble Rajesh Tandon, J.

Present application under section 482 Cr.P.C. has been filed assailing the F.I.R. dated 5th October 1999 lodged in P.S. Kotwali, Roorkee and a case having been registered under section 420, 406, 504 and 506 I.P.C. case crime No. 153 of 1999.

The F.I.R. of the case shows that there are allegations of the offence punishable under section 420 and 409 I.P.C. and it is well settled that interference under Section 482 of the Code of Criminal Procedure can only be made when on the face of the FIR itself, no case is made out against the applicant.

Since the disputed question with regard to the offence punishable under section 420 and 409 I.P.C. is involved, therefore, prima facie no case can be made out for interference under Section 482 of the Code of Criminal Procedure.

11. In ***Union of India Vs. Prakash P. Hinduja and another 2003 SCC (Cri) 1314,*** the Apex Court has held as under:

> ""9. ...*The grounds on which the prosecution initiated against an accused can also be quashed by the High Court in exercise of power conferred by Section 482 CrPC has been settled by a catena of decisions of this Court rendered in R.P. Kapur v. State of Punjab AIR 1960 SC 866, Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551, Municipal Corpn. Of Delhi v. Ram Kishan Rohtagi (1983) 1 SCC 1 and Raj Kapoor v. State (1980) 1 SCC 43. The matter was examined in considerable detail in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 and after review of practically all the earlier decisions, the Court in para 108 of the Report laid down the grounds on which power under Section 482 CrPC can be exercised to quash the criminal proceedings and basically they are: (1) where the allegations made in the FIR or complainant, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused, (2) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the*

institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

10. The principal question which, therefore, requires consideration is whether the court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes and whether any error or illegality committed during the course of investigation would so vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid."

In the present case, I do not find any ground to interfere under Section 482 CrPC at this stage, the petition under section 482 Cr.P.C. deserves to be dismissed. However, in case the applicant applies for bail, the same shall be considered expeditiously.

Accordingly, the petition is dismissed.

Dated: 14.11.2006 **Rajesh Tandon, J.**

*Dhyani